person. The solicitation was not accomplished until the letter was received, and had the letter been lost in the mails the crime could never have been committed. In this case the act was not completed until the letter had been received and read in the state of Georgia.

It cannot be doubted that the shipments of liquor by a person in one state to a resident of another state, constitutes interstate commerce. And as a rule the negotiations in one state of sales of goods, which are in another state, for the purpose of their introduction into the former state, also is a portion of interstate commerce. *17 Am. and Eng. Encyc of Law,* 2nd ed., 65. The case at bar comes dangerously close to that line of demarcation that separates the powers of a sovereign state to control its intrastate police regulations, and the protection which the Constitution of the United States throws around interstate commerce. But since the passage of the *Wilson Act,* all negotiations that lead up to a transaction in intoxicating liquors are not interstate commerce, though the liquor and the person selling it are in a different state from the purchaser. See *Delameter v. United States, supra.*

As by the terms of the *Wilson Act,* liquors lose their interstate character as soon as they reach the borders of a state, the decisions of the courts in insurance cases become pertinent. In *Massachusetts v. Nutting,* 175 Mass. 156, confirmed in 183 U. S. 553, it was held that while the legislature could not impair the freedom of its citizens in their election with whom they would contract, it could prevent the foreign insurer from sheltering himself under that protection to solicit contracts which otherwise the citizens might not have thought of making. The law cannot impair the freedom of the citizen of Georgia, guaranteed him by the Constitution of the United States, to order liquor from other states for his private consumption, but the state can prohibit others from sheltering themselves under this freedom for the purpose of soliciting his orders, when such solicitation is a crime. Neither does this decision take away from the citizens of Tennessee any of the rights or privileges granted the citizens of Georgia, for the right of soliciting orders is denied in both cases.

MISCONDUCT OF JURORS.

Between the natural dislike of the average citizen of serving on a jury and the vigilance of astute counsel in detecting any

short-coming on the part of the juror, it is not surprising that occasionally we find reports of alleged misconduct. The most recent illustration is in *Continental Casualty Co. v. Semple,* 112 S. W. (Ky.) 1122. During the trial of the action, one of the jurors closed his eyes and in an effort to have the judgment reversed, affidavits were made by the counsel for the appellant that the juror was actually asleep. The counsel for the appellee and the juryman, both made affidavits that the latter was not asleep but merely listening with his eyes closed. The court refused to reverse the judgment.

There seems to be no similar case reported, but the cases of alleged misbehavior by jurors are numerous. Misconduct in the jury box is rare, and is usually occasioned by the efforts of members of the jury to direct counsel in their conduct of the case. Thus, in *Chicago City Railway Co. v. Brecher,* 112 Ill. App. 106, during the trial of the case one of the jurors interrupted to inform the court that he would not believe certain evidence already admitted, and that it was useless for the court to receive the same. Such remarks were clearly reprehensible, as a juror should not form a final conclusion until all the evidence has been received. There are but few early cases relating to the misconduct of jurors, probably because juries were formerly subject to a more rigid guardianship than at the present time. Two hundred years ago, Justice Treby in the trial of one Peter Cook, at the Old Bailey, said to the impanelled jury: "If any man in this panel have any particular displeasure to the prisoner or be indifferent, or have declared himself so, I do admonish and desire him to discover so much in general, for it is not fit nor for the honor of the King's Justice that such a man should serve on the jury." In a case which arose in Connecticut in 1789, a juror was charged with having conversation with strangers before the verdict was rendered. In its opinion, the court declared that such conduct was a violation of his oath, and if such a practice were permitted, the purity of trials by jury would be perverted and corrupted. *Dana v. Roberts,* 1 Root (Conn.) 134. See also *Bow v. Parsons,* 1 Root (Conn.) 429 (1792).

The devices to which jurymen will resort in order to be released from their duties, oftentimes border upon the ridiculous. In *White v. Martin,* 3 Ill. 69, the court at the conclusion of its charge, directed the jury to return a sealed verdict and then disperse. After the jury had been out several hours, they had the result of

their deliberations set forth in a writing, and this was placed in a sealed envelope. When the envelope was opened the following day the writing was found to contain the words: "Can't agree." Needless to say the action of the jury was severely condemned by the court, and characterized as a gross violation of the duties of their office. Although the foregoing incident occurred in 1839, the spirit which moved the jury to adopt such a plan still seems to survive, for a similar affair happened in New York City last December. At the time of writing, it appears probable that the erring jurors will be committed to jail for a short period to expiate their offence. The courts have always been very strict in forbidding communication with a jury while their verdict is pending. There is an Illinois case holding that the nature of the conversation had with the jury is immaterial. *Martin v. Morlock,* 32 Ill. 485. But in this case the jury had attempted to trick the court immediately after a conversation with one of the parties, so that fact probably influenced the decision. But at the present day, the mere fact that communication has been had with a juror, is not of itself sufficient ground for setting aside the verdict. The subject of the conversation may be shown, and if its character is such that it would probably not influence the decision of the jury, a new trial will not be allowed. In *Fleischman v. Samuel,* 18 App. Div. (N. Y.) 97, the foreman of the jury was seen in conversation with the plaintiff. The juryman claimed he said to the plaintiff: "It is a long sit to sit here all day." The plaintiff denied having had any conversation whatsoever. The court sustained the verdict for the plaintiff, saying that the conversation was only an inadvertent indiscretion and could have no effect upon the conclusion reached.

A verdict will be set aside if a juror ask a stranger concerning public sentiment. *Churchill v. Emerick,* 56 Mich. 536. A premature disclosure of a verdict to counsel for one of the parties is not a reason for reversal. But such a proceeding will be carefully scrutinized, and if there is the least reason to infer that the defeated party has suffered damage because of such a disclosure, the verdict will be set aside. *Ingersoll v. Truebody,* 40 Cal. 603.

The question of keeping newspaper notices referring to the matter at issue from the attention of the jury, has always been a troublesome one for both court and counsel. Unless the jury is completely isolated, it is practically impossible to prevent the members reading newspaper accounts of the trial, though the latter

be even of the smallest importance. The Federal courts have adopted a rule which may seem a little severe, but as it applies to only one phase of this topic its application is seldom required. In a case being tried where the jury separated each night, certain apparently "inspired" articles appeared in the leading local papers of such a nature that they would probably influence the minds of those reading them. The court set aside the verdict saying that it would presume the jury saw and read these articles. *Meyer v. Cadwalder,* 49 Fed. Rep. 32. The wisdom of such a rule is doubtful, however, unless there is very clear proof that the publication of the articles was instigated by one of the parties. If such a rule is carried out to its logical consequences, we might have the curious spectacle of one verdict being set aside, because a party to the action procured the publication of matter likely to influence the minds of the jurors, and then on a retrial of the same case, if the newspaper publishes the identical matter again but of its own motion, the verdict will be sustained. While it is undoubtedly desirable to have jurors refrain from reading newspaper comments on the trial, yet if they do so, in the absence of express directions to the contrary, it can hardly be said that they are guilty of misconduct.

Besides being guilty of contempt in misconducting himself, a juror may be subject to a criminal prosecution for acts that may seem but of very small importance to the layman, and which, indeed, are far from being criminal *per se.* In the early part of the last century, we find a case holding a juryman guilty of a misdemeanor who asked a stranger what he thought of the evidence. *Barlow v. State,* 2 Blach (Ind.) 114. But to-day, when the act is occasioned through ignorance or want of judgment rather than any wilful intent to do wrong, it is probable that a juror would not be punished as having committed a criminal act.